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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of the Cable)
Television Consumer Protection) MM Docket No. 92-259
and Competition Act of 1992)
)
Broadcast Signal Carriage Issues)

REPLY COMMENTS OF CBS INC.

CBS Inc. ("CBS"), by its attorneys, submits its Reply Comments in the above proceeding, in which the Commission is considering regulations to implement the retransmission consent and mandatory carriage provisions of the Cable Television Consumer Protection and Competition Act of 1992.¹

In its initial comments, CBS urged that the Commission's role in this proceeding is essentially a ministerial one. It should be guided by the plain language of the 1992 Act and its legislative history. It should not

¹ Pub. L. No. 102-385, 102 Stat. _____ (1992) ("1992 Act"). New Sections 614(f) and 325(b) of the Communications Act (47 U.S.C. 151ff), which were created by Sections 4 and 6 of the 1992 Act, mandate these proceedings.

confuse copyright issues with the communications policy issues involved in retransmission consent, and it should not attempt to anticipate and resolve contractual and other issues which might arise in the marketplace's transition to a retransmission consent regime.

The purpose of these Reply Comments is to respond briefly to one argument made by certain cable television parties on an issue which was not raised in the Notice of Proposed Rulemaking and which is both baseless and not properly subject to Commission consideration in this proceeding.² That is, the NCTA urges that "[a]pplication of the network non-duplication rules to retransmission consent stations is entirely inappropriate in light of the new rights that Congress has given broadcast stations." NCTA Comments at p.34. Its rationale for this conclusion is that "the very threat of denying subscribers access to network programming would grant the station tremendous bargaining leverage." Id. at p.35. While NCTA would apparently deny network nonduplication rights to all retransmission consent stations, Viacom would deny it only to those stations opting for retransmission consent which

² See, for example, Comments of the National Cable Television Association, Inc. ("NCTA Comments") at pp.34-36, and Comments of Viacom International Inc. ("Viacom Comments") at pp.36-44.

fail to reach a carriage agreement with a cable system.
Viacom Comments at p.36.

It is clear that the Commission should not -- indeed, cannot -- act in this proceeding to narrow the scope of the network nonduplication rules in the manner proposed. The Senate Commerce Committee clearly stated that, in approving the retransmission consent mechanism as finally adopted, it "relied on the protections which are afforded local stations by the FCC's network non-duplication and syndicated exclusivity rules," and that amendments to, or deletion of, the program exclusivity rules to create new rights in cable systems to duplicate the programming on local broadcast stations "would...be inconsistent with the regulatory structure created in [the 1992 Act]."³ A clearer statement of Congressional intent can hardly be imagined, and, contrary to Viacom's suggestion, is not something the Commission can "safely disregard." Viacom Comments at p.43.

Because the program exclusivity rules are not at issue in this proceeding, we will resist making an extended

³ Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 92, 102d Cong., 1st Sess. (1991) at p.38. Section 614(b)(3)(B) of the 1992 Act itself also presupposes the continued existence of program exclusivity protection.

substantive defense of them here, except to note that the underlying purpose of the network nonduplication rules is to preserve a degree of exclusivity which is essential to the functioning of the network/affiliate system of broadcasting.⁴ The enactment of the must-carry/retransmission consent option has not affected the policy basis for these rules nor has it diminished their necessity. Rather than creating a bargaining situation which is "unfairly weighted in favor of the broadcasters"⁵ the rules simply preserve the modicum of exclusivity currently available to a local network affiliate, without which the retransmission consent option would be essentially gutted.

In any case, it is ironic that the cable industry pleads to the Commission for relief from what it fears will be the "tremendous bargaining leverage" of broadcast

⁴ As the Commission said when it adopted the current version of the network nonduplication rules, which do not require that the station invoking its nonduplication rights be carried on the cable system against which the rights are exercised:

"We continue to believe that the private organization of networks is an efficient method of doing business, and that it is in the public interest to allow enforcement of reasonable exclusivity to support that method of distribution." Program Exclusivity in the Cable and Broadcast Industries, 64 RR 2d 1818, 1851 (1988).

⁵ NCTA Comments at p. 35.

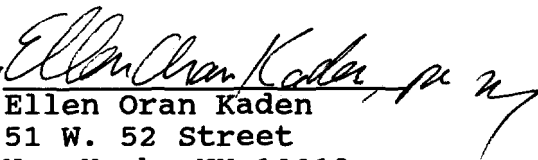
stations in retransmission consent negotiations and attempts to infer some support for this fear in the 1992 Act.⁶ In fact, the statute is premised on factual conclusions which include a Congressional finding that cable systems typically "face no local competition", resulting in "undue market power for the cable operator as compared to...consumers and video programmers." 1992 Act, Section 2(a)(2). It would be a serious misreading of Congressional intent, to say the least, for the Commission to revisit the program exclusivity rules on the basis that the cable industry needs extraordinary relief from oppressive broadcaster bargaining power.

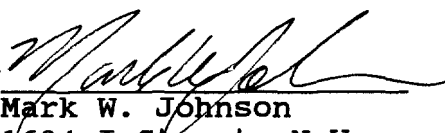
For the above reasons, and for the reasons discussed in our initial comments, the Commission should not allow itself to be diverted from its goal of adopting a regulatory scheme for retransmission consent implementation which reflects clear Congressional intent and is as simple and straightforward as possible.

⁶ NCTA Comments at pp.35-36.

Respectfully submitted,

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